

GENERAL ORDER NO 6
PLAN OF THE UNITED STATES DISTRICT
COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA FOR THE
RANDOM SELECTION OF GRAND AND PETIT JURORS

Pursuant to the Jury Selection and Service Act of 1968 (Title 28 United States Code Section 1861 et seq), the following amended plan is hereby adopted by this court, subject to approval by the reviewing panel for the Ninth Circuit and to such rules and regulations as may be adopted from time to time by the Judicial Conference of the United States.

I. DIVISIONS

Pursuant to the provisions of the Act, 28 USC § 1869(e), the Northern District of California is hereby divided into divisions for jury selection purposes as follows:

1. San Francisco-Oakland jury division, consisting of the counties of Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, and Sonoma.

2. San Jose jury division, consisting of the counties of Monterey, San Benito, Santa Clara, and Santa Cruz.

3. Eureka jury division, consisting of the counties of Del Norte, Humboldt, Lake, and Mendocino.

Jurors will be selected for service from a single division or from any combination of divisions as the Chief Judge may from time to time direct.

II. POLICY

It is the declared policy that all litigants in this court entitled to trial by jury shall have the right to grand and petit jurors selected at random from a fair cross section of the community in the district or division wherein the court convenes and that all citizens shall have the opportunity to be considered for service on grand and petit juries and shall have an obligation to serve as jurors when summoned for that purpose.

No citizen shall be excluded from service as a grand or petit juror in this court on account of race, color, religion, sex, national origin, or economic status.

III. MANAGEMENT AND SUPERVISION OF JURY SELECTION PROCESS

The clerk of the district court is authorized to manage the jury selection process under the supervision and control of the chief judge of the district. The use of the word "clerk" in this plan contemplates the clerk of this court and any and all of his deputies. The phrase "chief judge of this district," wherever used in this plan, shall mean the chief judge of this district, the designated general duty judge, or such judge as the chief judge may designate.

IV. SUPPLEMENTATION OF VOTER REGISTRATION LISTS

The United States District Court finds that to foster the policy and protect the rights secured by 28 USC §§ 1861 and 1862, driver record information will be used to supplement voter record information for the creation of master jury wheels. Voter registration lists supplemented with driver lists hereafter will be known as the supplemented voter registration lists.

V. RANDOM SELECTION FROM SUPPLEMENTED VOTER REGISTRATION LISTS

Supplemented voter registration lists of the counties of the State of California within the Northern District of California represent a fair cross section of the community in the Northern District of California and their use for the random selection of grand and petit jurors adequately and fairly fosters the policy of and protects the rights secured by 28 USC §§ 1861 and 1862. Accordingly, names of all jurors serving on or after the effective date of this plan shall be selected at random from the supplemented voter registration lists of all counties within the relevant division.

The clerk, or non-court personnel authorized by the clerk, shall make the random selection of names; computers; when available, may be used in establishing the sequence, and in the achievement of a fair cross section of the community from said supplemented voter registration lists.

The court finds that electronic data processing methods can be advantageously used for selecting and copying names from the supplemented voter registration lists of those counties that maintain those lists in machine readable forms. It further finds that in those counties currently maintaining (or which may hereafter maintain) their supplemented voter registration lists in handwritten or printed form it may be advantageous to employ a combination of methods whereby names are initially selected from the supplemented voter registration lists manually and then recorded in an electronic format.

Therefore, a properly programmed electronic data processing system or a combination system employing both manual and electronic machine methods may be used to select names from supplemented voter registration lists of any or all counties in this district, provided that the required proportions of names for each county are maintained and that the hereinafter described "quotient" and "starting number" formula is followed.

If the court elects to use electronic machine methods or combination manual-machine methods, the selection system shall be planned and programmed to achieve the same results as are described for a manual selection procedure. Where a machine selects the names, it must be programmed, first, to accept a specific instruction as to what "starting number" and "quotient" formula is to be used, and second, to perform a proportionately balanced selection and retrieval of names according to that formula.

VI. RANDOM SELECTION SCHEME

The key number for the selection of registered voter names from each county in a division is the product of dividing the total number of registered voters in that county by the proportional number of registered voter names required from that county for the division master jury wheel.

The key number for the selection of driver/ID card holder names from each county in a division is the product of dividing the total number of licensed drivers and ID card holders in that county by the proportional number of driver/ID card holder names required from that county for the division master jury wheel.

In order to preserve the integrity of random selection and achieve a cross section of the community, a number from 1 to 100 shall be drawn from a wheel or box. The number so drawn shall be the position on the county list of registered voters and licensed driver/ID card holders, however these may be customarily arranged (e.g., alphabetically, or by assembly district, or by precinct), occupied by the first name to go into the division master jury wheel.

VII. MASTER JURY WHEELS

The clerk shall maintain a master jury wheel for each of the jury divisions within the district. The names of all persons randomly selected from the supplemented voter registration lists of the counties in a division shall be placed in the master jury wheel for that division. The physical form of record on which these names are kept may be an electronic data storage device.

The minimum number of names to be placed initially in these master jury wheels shall be as follows:

San Francisco-Oakland jury division — 30,000

San Jose jury division — 10,000

Eureka jury division — 7,000

The foregoing minimum number of names represents well in excess of one-half of one percent of the total number of registered voters for each division and is in substantial compliance with the mandate of the Act.

The chief judge of the district may order additional names to be placed in the master wheel for each division from time to time as is necessary to achieve the purposes of the Act.

The master jury wheel of each division shall be emptied and refilled as soon as practicable every two years immediately following the close of registration for the general election.

VIII. DRAWING OF NAMES FROM THE MASTER JURY WHEEL; COMPLETION OF JUROR QUALIFICATION FORM

From time to time, as directed by the court, the clerk shall publicly draw at random from the master jury wheel of each division the names of as many persons as maybe required for jury service in each division.

In drawing the names, allowance shall be made for the possibility that some of the forms will not be returned, that some individuals may be exempt by law and others may not be able to comply with the statutory qualifications.

The clerk may, upon order of the court, prepare an alphabetical list of the names drawn. Any list so prepared shall not be disclosed to any person except pursuant to this plan and to 28 USC §§ 1867 and 1868. The clerk shall mail to every person whose name is drawn from the master wheel a juror qualification form accompanied by instructions to fill out and return the form, duly signed and sworn, to the clerk by mail within ten days. If the person is unable to fill out the form, another shall do it for him and shall indicate that he has done so and the reason therefor. In any case in which it appears that there is an omission, ambiguity, or error in a form, the clerk shall return the form with instructions to the person to make such additions or corrections as may be necessary and to return the form to the clerk within ten days. Any person who fails to return a completed juror qualification form as instructed may be summoned by the clerk forthwith to appear before the clerk to fill out a juror qualification form. A person summoned to appear because of failure to return a juror qualification form as instructed who personally appears and executes a juror qualification form before the clerk may, at the discretion of the district court, except where his prior failure to execute and mail such form was willful, be entitled to receive for such appearance, the same fees and travel allowances paid to jurors under 28 USC § 1871. At the time of his appearance for jury service, any person may be required to fill out another juror qualification form in the presence of the clerk or the court, at which time, in such cases as it appears warranted, the person may be questioned, but only with regard to his responses to questions contained on the form. Any information thus acquired by the clerk may be noted on the juror qualification form and transmitted to the chief judge or such district court judge as this plan provides.

Any person summoned pursuant to the above provisions who fails to appear as directed may be ordered by the district court forthwith to appear and show cause for his failure to comply with the summons. Any person who fails to appear pursuant to such order or fails to show good cause for noncompliance with the summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof. Any person who willfully misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

IX. EXCLUSION, EXCUSE OR EXEMPTION FROM JURY SERVICE

Except as provided herein, no person or class of persons shall be excluded, excused or exempted from service as jurors, provided that any person summoned for jury service may be (1) excused by the court or the clerk for not more than six months at a time upon showing of undue hardship or extreme inconvenience, or (2) excluded by the court upon a finding that such person may be unable to render impartial jury service, or that his service as a juror would disrupt the proceedings, or (3) excluded upon peremptory challenge as provided by law, or (4) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown, or (5) excluded upon determination by the court that his service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (5) of this section unless the judge, in open court, determines that such is warranted and that exclusion of the person will not be inconsistent with 28 USC §§ 1861 and 1862. The number of persons excluded under said clause (5) shall not exceed one per centum of the number of persons who return executed juror qualification forms during the period specified in this plan, between two consecutive fillings of the master jury wheel of the relevant jury division. The names of the persons excluded under said clause (5), together with detailed explanations for the exclusions, shall be forwarded immediately to the reviewing panel for the Ninth Circuit, which shall have the power to make any appropriate order, prospective

or retroactive, to redress any misapplication of said clause (5), but otherwise exclusions effectuated under such clause shall not be subject to challenge under the provisions of this plan. Any person excluded from a particular jury under clauses (2), (3), and (4) above shall be eligible to sit on another jury if the basis for his initial exclusion would not be relevant to his ability to serve on such other jury.

Whenever a person is disqualified, excused, exempt, or excluded from jury service, the clerk shall note in the space provided on his juror qualification form or on the juror's card drawn from the qualified jury wheel the specific reason therefor.

It is the policy of the district to minimize the inconvenience to prospective jurors resulting from being on standby or actual service for extended periods. Therefore, in any one-year period, no person shall be required to (1) serve or attend court or be on standby for prospective service as a petit juror for a total of more than two weeks, except when necessary to complete service in a particular case, or (2) serve on more than one grand jury, or (3) serve as both a grand and petit juror.

When there is an unanticipated shortage of available petit jurors drawn from the qualified wheel, the court may require the marshal to summon a sufficient number of petit jurors selected at random from the supplemented voter registration lists in a manner ordered by the court consistent with 28 USC §§ 1861 and 1862.

Any person summoned for jury service who fails to appear as directed may be ordered by the court to appear forthwith and show cause for his failure to comply with the summons. Any person who fails to show good cause for noncompliance with a summons may be fined not more than \$1,000, imprisoned not more than three days, ordered to perform community service, or any combination thereof.

The court hereby finds and states that exemption of the following groups of persons or occupational classes is in the public interest and would not be inconsistent with the Act, and accordingly, members of such groups are barred from jury service:

(1) members in active service in the armed forces of the United States, the National Guard, and Organized Reserves;

(2) members of the fire or police departments of any state, district, territory, possession, or subdivision thereof;

(3) public officers in the executive, legislative, or judicial branches of the government of the United States, or any state, district or territory or possession, or subdivision thereof, who are actively engaged in the performance of official duties. Public officer shall mean a person who is either elected to public office or who is directly appointed by a person or persons elected to public office.

X. EXCUSES ON INDIVIDUAL REQUEST

The court finds that jury service by the groups of persons or occupational classes herein below provided would entail undue hardship or extreme inconvenience to the members thereof and excuse of the members thereof would not be inconsistent with 28 USC §§ 1861 and 1862. The

members of such groups of persons or occupational classes may, on individual request therefor, be excused from jury service:

- (1) sole caretakers of a preschool child or of an aged or disabled person, and not otherwise employed;
- (2) persons residing more than 80 miles from the place of holding court;
- (3) persons over 70 years of age;
- (4) persons who within the last year have served on one or more petit or grand juries in any state court, or who have reported in person to the courthouse in response to a jury summons;
- (5) persons who demonstrate that they would suffer undue hardship or extreme inconvenience if required to serve; such persons may be excused by the court for such period as the court deems necessary;
- (6) persons who serve without compensation as firefighters or members of a rescue squad or ambulance crew for a public agency.

XI. QUALIFICATIONS FOR JURY SERVICE

The clerk under supervision of the court shall determine solely on the basis of information provided on the juror qualification form and other competent evidence whether a person is unqualified for, or exempt, or to be excused from jury service. The clerk shall enter such determination in the space provided on the juror qualification form. If a person did not appear in response to a summons, such fact shall be noted on the appropriate form.

In making such determination, the clerk shall deem any person qualified to serve on grand and petit juries in this court unless such person

- (1) is not a citizen of the United States eighteen years old who has resided for a period of one year within the judicial district;
- (2) is unable to read, write, and understand the English language with a degree of proficiency sufficient to fill out satisfactorily the juror qualification form;
- (3) is unable to speak the English language;
- (4) is incapable, by reason of mental or physical infirmity, of rendering satisfactory jury service; or
- (5) has a charge pending against him or her for the commission of, or has been convicted in a state or federal court of record of, a crime punishable by imprisonment for more than one year and his or her civil rights have not been restored.

XII. QUALIFIED JURY WHEEL

The clerk shall maintain separate qualified jury wheels for each division in the district containing not less than 300 names and shall place in such wheels the names of all persons drawn from the master jury wheel who are determined to be qualified as jurors and not exempt or excused pursuant to this plan.

The qualified jury wheels may be maintained either in manual records or in an electronic data storage device.

The contents of records or papers used by the clerk in connection with the jury selection process shall not be disclosed, except in the manner provided in 28 USC § 1867.

XIII. DISCLOSURE OF NAMES OF JURORS

The names drawn from the qualified jury wheel shall be disclosed to the parties and to the public upon request of any party or member of the public; provided, however, that the chief judge or any judge before whom a case is pending in which any of the prospective jurors concerned are expected to serve, may by special order require that the clerk keep these names confidential where the interest of justice so requires.

XIV. PETIT JURY PANELS

The clerk shall draw at random from the qualified jury wheels for use on such petit jury panels in such numbers and at such times as may be ordered by a judge of this court. Unless otherwise ordered by the chief judge, the term of service of a prospective petit juror shall be two weeks, during which two-week period no prospective petit juror shall be required to report to the courthouse more than once unless (1) the jury-selection process in the case to which he or she has been prospectively assigned is continuing, or (2) he or she is selected as a juror. Prospective jurors who are not selected as trial jurors shall have satisfied their jury service obligation upon completion of voir dire, empanelment of the final jury, and discharge by the judge. Those prospective jurors who are selected as trial jurors shall have satisfied their jury service obligation upon completion of the trial.

XV. GRAND JURY PANELS

One or more grand juries shall be impaneled for this district or any division of this district for terms of service at San Francisco, or such other places as the court may designate and at such times as the court may order. If a grand jury is to be impaneled for service in a division only, the clerk shall draw at random from the qualified wheel of that division for the grand jury panel such number of prospective grand jurors as the chief judge, or the judge designated by the chief judge to preside over the jury division in which the grand jury is to be impaneled, may direct. If a grand jury is to be impaneled for service in the entire district, the clerk shall draw at random from the qualified wheel of each division for the grand jury panel such number of prospective grand jurors as the chief judge may direct in the same ratio that the number of registered voters in each division bears to the total number of registered voters in the district. Each grand jury shall serve until discharged by the chief judge, but no regular, criminal grand jury shall serve more than eighteen months unless the court extends the service of the grand jury for a period of six months or less, upon a determination that such extension is in the public interest. Special grand juries as defined

in 18 USC § 3331, shall serve for a term of eighteen months unless an order for its discharge is entered earlier by the court. If, at the end of an eighteen month term or any extension thereof, the district court determines the business of the grand jury has not been completed, the court may enter an order extending such term for an additional period of six months. No special grand jury term so extended shall exceed thirty-six months, except as provided in subsection (e) of 18 USC § 3333.

The court may direct that alternate jurors may be designated at the time a grand jury is selected. Alternate jurors may thereafter be impaneled to replace excused jurors in the order in which they were designated. Alternate jurors shall be drawn in the same manner and shall have the same qualification as the regular jurors and if impaneled shall be subject to the same challenges, shall take the same oath and shall have the same functions, powers, facilities and privileges as the regular grand jurors.

XVI. ASSIGNMENT OF JURORS

Once each month, or more or less frequently, if necessary, at times to be determined by the court, the clerk shall publicly draw from the qualified wheel one at a time and without previous examination, the names of such number of persons for petit jury service as may be needed. This drawing of names from the qualified jury wheel may also be done by electronic data processing procedure. Persons chosen will be summoned to appear for assignment to petit jury panels. The clerk is authorized and empowered to serve such summonses for jury service by first class mail addressed to such persons at their usual residence or business addresses. After service of any summons, the clerk shall make affidavit of service.

XVII. CHALLENGES TO THE SELECTION PROCEDURES

Any challenge to this plan or the court's compliance with the provisions of this plan or compliance with the provisions of the Jury Selection and Service Act of 1968 shall be made within the times and in the manner provided in 28 USC § 1867.

XVIII. FORMS EMPLOYED BY THE CLERK

The court has considered and approved all forms prepared and employed by the clerk of this court, including the revised juror qualification questionnaire and the summons form as prescribed by the Administrative Office of the United States Courts and approved by the Judicial Conference of the United States. This plan and the aforesaid forms are lodged with the clerk and may be the subject of public inspection at any time.

XIX. EFFECTIVE DATE

The effective date of this plan shall be established by a separate order of this court after this plan has been approved by the reviewing panel of the Ninth Circuit.

The current jury plan of this court, as approved by the reviewing panel of the Ninth Circuit, together with amendments thereto, shall remain effective and operative until the effective date of this revision.

Nothing in this plan shall affect the composition of the various wheels in existence at the time of the adoption of this plan or preclude the service of any juror summoned or impaneled on or before the date upon which this plan shall become effective.

The court shall promptly notify the reviewing panel, the Administrative Office of the United States, and the Attorney General of the United States of the adoption of said amended plan by filing copies therewith.

PLAN TO BE FILED AS GENERAL ORDER OF COURT

This order shall be filed by the clerk of this district court in the general order book of the district, and a copy thereof shall be filed in the book of copies of general orders of this district maintained in San Jose and in Oakland.

ADOPTED: December 8, 1981
AMENDED: November 15, 1988
AMENDED: April 6, 1989
AMENDED: January 22, 1991
AMENDED: July 21, 1992
AMENDED: August 21, 2000
AMENDED: February 22, 2001
AMENDED: June 28, 2005
AMENDED: February 23, 2009
AMENDED: December 21, 2009

FOR THE COURT:



Vaughn R Walker
United States District Chief Judge

Approved by the Judicial Council of the Ninth Circuit on the 21 day of December, 2009

/S/ Alex Kozinski
Alex Kozinski
United States Circuit Chief Judge